

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 COMMITTEE AMENDMENT ADOPTED AND AMENDED

5 May 31, 2007

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H. 3820

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9 Introduced by Reps. Cato, Viers, Clemmons, Bales, Hardwick,
10 Miller, Haley, Perry, Leach, Anderson, Witherspoon, Barfield,
11 Battle, Dantzler, Edge, Herbkersman and Hodges

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[SEC 6/6/07 12:10 PM]

14 Read the first time May 15, 2007.

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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ENACTING THE “OMNIBUS COASTAL
13 PROPERTY INSURANCE REFORM ACT OF 2007”; BY
14 ADDING ARTICLE 11 TO CHAPTER 6, TITLE 12 SO AS TO
15 ALLOW AN INSURANCE POLICYHOLDER TO ESTABLISH
16 A CATASTROPHE SAVINGS ACCOUNT, TO DEFINE
17 QUALIFIED CATASTROPHE SAVINGS EXPENSES AND
18 QUALIFIED DEDUCTIBLE, AND TO ALLOW A TAXPAYER
19 TO CLAIM A CREDIT AGAINST THE STATE INCOME TAX
20 FOR DEPOSITS MADE INTO A CATASTROPHE SAVINGS
21 ACCOUNT; BY ADDING SECTION 12-6-3660 SO AS TO
22 ALLOW A TAXPAYER TO CLAIM A CREDIT AGAINST THE
23 STATE INCOME TAX FOR COSTS INCURRED TO
24 RETROFIT A LEGAL RESIDENCE TO MAKE IT MORE
25 RESISTANT TO LOSS DUE TO HURRICANE, RISING
26 WATER, OR OTHER CATASTROPHIC WIND EVENT; BY
27 ADDING SECTION 12-6-3670 SO AS TO ALLOW A
28 TAXPAYER TO CLAIM A CREDIT AGAINST THE STATE
29 INCOME TAX EQUAL TO THE INSURANCE PREMIUM
30 COSTS INCURRED BY THE TAXPAYER; TO AMEND
31 SECTION 12-36-910, AS AMENDED, RELATING TO SALES
32 TAX EXEMPTIONS, SO AS TO ALLOW A THREE PERCENT
33 SALES TAX ON SPECIFIED BUILDING MATERIALS USED
34 ON HOMES TO MITIGATE DAMAGE FROM WIND; TO
35 DESIGNATE SECTIONS 38-3-10 THROUGH 38-3-240 AS
36 ARTICLE 1, CHAPTER 3, TITLE 38 AND ENTITLED
37 “GENERAL PROVISIONS”; BY ADDING ARTICLE 3 TO
38 CHAPTER 3, TITLE 38 SO AS TO PROVIDE THAT THE
39 DIRECTOR OF THE DEPARTMENT OF INSURANCE HAS
40 AUTHORITY TO ISSUE GENERAL ORDERS APPLICABLE
41 TO ALL INSURANCE COMPANIES AFTER THE GOVERNOR
42 DECLARES A STATE OF EMERGENCY; TO PROVIDE THAT

1 THE DEPARTMENT BY ORDER, MAY ADOPT ANY RULE
2 THAT FACILITATES RECOVERY FROM THE EMERGENCY;
3 TO PROVIDE THAT THE DEPARTMENT SHALL ADOPT
4 RULES STANDARDIZING REQUIREMENTS THAT MAY BE
5 APPLIED TO INSURERS AFTER A HURRICANE,
6 ADDRESSING CLAIMS REPORTING REQUIREMENTS,
7 GRACE PERIODS FOR PAYMENT OF PREMIUMS,
8 TEMPORARY POSTPONEMENT OF CANCELLATIONS AND
9 NONRENEWAL, AND ANY OTHER RULE THE DIRECTOR
10 CONSIDERS NECESSARY; BY ADDING SECTION 38-7-200
11 SO AS TO ALLOW TAX CREDIT INCENTIVES TO
12 INSURANCE COMPANIES THAT PROVIDE FULL
13 INSURANCE COVERAGE TO PROPERTY OWNERS ALONG
14 THE COAST OF SOUTH CAROLINA, SPECIFYING THE
15 AMOUNT OF THE CREDIT, AND ALLOWING UNUSED
16 CREDITS TO BE APPLIED IN SUCCEEDING TAXABLE
17 YEARS UNDER CERTAIN CIRCUMSTANCES; BY ADDING
18 SECTION 38-75-755 SO AS TO REQUIRE INSURERS TO
19 DISCLOSE ALL AVAILABLE DISCOUNTS TO THE
20 INSURED; TO AMEND SECTION 38-73-260, AS AMENDED,
21 SO AS TO CLARIFY THAT RATES FALLING WITHIN THE
22 SEVEN PERCENT FLEX-BAND LIMITATION REMAIN
23 SUBJECT TO THE PROHIBITION AGAINST RATES NOT
24 BEING EXCESSIVE, INADEQUATE, OR UNFAIRLY
25 DISCRIMINATORY AND THAT THE DEPARTMENT MAY
26 CONSIDER THE RATE IMPACT ON INDIVIDUALS AND
27 TERRITORIES WHEN DETERMINING WHETHER A RATE IS
28 EXCESSIVE, INADEQUATE, OR UNFAIRLY
29 DISCRIMINATORY; TO AMEND SECTION 38-73-1095,
30 RELATING TO ESSENTIAL PROPERTY INSURANCE AND
31 RATING PLAN FACTORS, SO AS TO PROVIDE DISCOUNTS
32 FOR RETROFITTING PROPERTY; TO AMEND ARTICLE 5,
33 CHAPTER 75, TITLE 38, RELATING TO WINDSTORM AND
34 HAIL INSURANCE, SO AS TO CLARIFY THE DEFINITIONS
35 OF INSURABLE PROPERTY AND COASTAL AREA
36 RELATING TO ELIGIBILITY FOR COVERAGE BY THE
37 SOUTH CAROLINA WIND AND HAIL UNDERWRITING
38 ASSOCIATION; TO CLARIFY THE PURPOSE OF ARTICLE 5;
39 TO CLARIFY THAT THE SOUTH CAROLINA WIND AND
40 HAIL UNDERWRITING ASSOCIATION SHALL PROVIDE
41 WIND AND HAIL INSURANCE FOR RESIDENTIAL AND
42 COMMERCIAL PROPERTY TO APPLICANTS UNABLE TO
43 PROCURE IT IN THE COASTAL AREAS OF THIS STATE; TO

1 PROVIDE INFORMATION THAT MUST BE ADDRESSED IN
2 THE PLAN OF OPERATION; TO MAKE TECHNICAL
3 CHANGES; TO PROVIDE FOR ADDITIONAL GENERAL
4 CORPORATE POWERS AND DUTIES FOR THE SOUTH
5 CAROLINA WIND AND HAIL UNDERWRITING
6 ASSOCIATION; TO PROVIDE THAT RATES CHARGED BY
7 THE SOUTH CAROLINA WIND AND HAIL
8 UNDERWRITING ASSOCIATION BE ESTABLISHED AT A
9 SELF-SUSTAINING LEVEL; TO PROVIDE OBJECTIVE
10 STANDARDS FOR EXPANDING THE TERRITORY
11 COVERED BY THE SOUTH CAROLINA WIND AND HAIL
12 UNDERWRITING ASSOCIATION; TO AMEND ARTICLE 8,
13 CHAPTER 75, TITLE 38, RELATING TO THE ADVISORY
14 COMMITTEE TO THE DIRECTOR AND THE SOUTH
15 CAROLINA BUILDING CODES COUNCIL AND LOSS
16 MITIGATION GRANT PROGRAM, SO AS TO MODIFY THE
17 MEMBERSHIP OF THE ADVISORY COMMITTEE AND TO
18 CLARIFY THAT THE CONTINUED EXISTENCE OF THE
19 PROGRAM IS SUBJECT TO ANNUAL LEGISLATIVE
20 APPROPRIATIONS; TO CLARIFY THAT THE PURPOSE IS
21 TO PROVIDE FOR ONGOING TRAINING FOR INSPECTORS
22 AND FOR OTHER PURPOSES CONSISTENT WITH THE
23 ARTICLE; TO ESTABLISH THE "SOUTH CAROLINA
24 HURRICANE GRANT DAMAGE MITIGATION PROGRAM"
25 WHICH PROVIDES FOR A GRANT PROGRAM FOR THE
26 MITIGATION OF DAMAGE TO OR THE ENHANCEMENT OF
27 MANUFACTURED HOMES; TO PROVIDE FOR MATCHING
28 GRANTS TO ENCOURAGE SINGLE-FAMILY SITE-BUILT
29 HOMES TO RETROFIT TO REDUCE THE STRUCTURE'S
30 VULNERABILITY TO A HURRICANE; TO PROVIDE
31 MATCHING GRANT FUNDS TO LOCAL GOVERNMENTS
32 FOR PROJECTS THAT REDUCE HURRICANE DAMAGE TO
33 SINGLE-FAMILY SITE-BUILT RESIDENTIAL PROPERTY;
34 TO PROVIDE THAT IN ADDITION TO STATE
35 APPROPRIATIONS AND OTHER POTENTIAL GRANT
36 FUNDS, THE PREMIUM TAXES PAID BY THE SOUTH
37 CAROLINA WIND AND HAIL UNDERWRITING
38 ASSOCIATION AND ONE PERCENT OF THE
39 COMMISSIONS PAID TO PRODUCERS MUST BE USED TO
40 FUND THIS PROGRAM ANNUALLY; TO AMEND SECTION
41 38-75-1140, RELATING TO THE EVALUATION OF
42 NATURAL HAZARD CATASTROPHE MODELS AND
43 REQUIREMENTS FOR MODELING ORGANIZATIONS, SO

1 AS TO REQUIRE MODELERS TO PROVIDE THE
2 DEPARTMENT WITH A LIST OF VARIABLES THAT ARE
3 SUBJECT TO INSURER INPUT WITH THEIR FILING AND
4 TO PROVIDE THAT THE DEPARTMENT MAY IMPOSE A
5 FEE ON MODELERS AND INSURERS TO RECOVER THE
6 COSTS OF EVALUATING HURRICANE MODELS; AND TO
7 AMEND SECTION 38-75-1160, RELATING TO NOTICE
8 REQUIREMENTS AND EXCEPTIONS BEFORE
9 CANCELLATION OR REFUSAL TO RENEW A POLICY OF
10 INSURANCE, SO AS TO INCREASE THE TIME PERIOD FOR
11 NOTIFYING AN INSURED OF THE CANCELLATION OR
12 REFUSAL TO RENEW A POLICY OF INSURANCE.

13 Amend Title To Conform

14
15 Be it enacted by the General Assembly of the State of South
16 Carolina:

17
18 SECTION 1. This act may be cited as the “Omnibus Coastal
19 Property Insurance Reform Act of 2007”.

20
21 SECTION 2. Chapter 6, Title 12 of the 1976 Code is amended by
22 adding:

23
24 “Article 11

25
26 Catastrophe Savings Account

27
28 Section 12-6-1610. As used in this article:

29 (1) ‘Qualified catastrophe expenses’ mean expenses paid or
30 incurred by reason of a major disaster that has been declared by the
31 Governor to be an emergency by executive order.

32 (2) ‘Qualified deductible’ means the deductible for the
33 individual’s homeowner’s policy for a taxpayer’s legal residence.

34 (3) ‘Legal residence’ means the taxpayer’s legal residence
35 pursuant to Section 12-43-220(c).

36
37 Section 12-6-1620. (A)(1) An individual taxpayer is allowed a
38 deduction from the tax imposed pursuant to Section 12-6-510 for
39 amounts contributed to a Catastrophe Savings Account in
40 accordance with subsection (B)(3); and

41 (2) all interest income earned by the Catastrophe Savings
42 Account is exempt from the tax imposed pursuant to Section
43 12-6-510 as provided in this article.

1 (B)(1) As used in this article, ‘Catastrophe Savings Account’
2 means a regular savings account or money market account
3 established by an insurance policyholder for residential property in
4 this State to cover an insurance deductible under an insurance
5 policy for the taxpayer’s legal residence property that covers
6 hurricane, rising floodwaters, or other catastrophic windstorm
7 event damage or by an individual to cover self-insured losses for
8 the taxpayer’s legal residence from a hurricane, rising floodwaters,
9 or other catastrophic windstorm event. The account must be
10 labeled as a Catastrophe Savings Account in order to qualify as a
11 Catastrophe Savings Account as defined in this article. A taxpayer
12 shall establish only one Catastrophe Savings Account and shall
13 specify that the purpose of the account is to cover the amount of
14 insurance deductibles and other uninsured portions of risks of loss
15 from hurricane, rising floodwater, or other catastrophic windstorm
16 event.

17 (2) A Catastrophe Savings Account is not subject to
18 attachment, levy, garnishment, or legal process in this State.

19 (3) The total amount that may be contributed to a
20 Catastrophe Savings Account must not exceed:

21 (a) in the case of an individual whose qualified deductible
22 is less than or equal to one thousand dollars, two thousand dollars;

23 (b) in the case of an individual whose qualified deductible
24 is greater than one thousand dollars, the amount equal to the lesser
25 of fifteen thousand dollars or twice the amount of the taxpayer’s
26 qualified deductible; or

27 (c) in the case of a self-insured individual who chooses
28 not to obtain insurance on his legal residence, two hundred fifty
29 thousand dollars, but shall not exceed the value of the individual
30 taxpayer’s legal residence.

31 (4) If a taxpayer contributes in excess of the limits provided
32 in item (3), the taxpayer shall withdraw the amount of the excess
33 contributions and include that amount in South Carolina income
34 for purposes of Section 12-6-510 in the year of withdrawal.
35

36 Section 12-6-1630. (A) A distribution from a Catastrophe
37 Savings Account must be included in the income of the taxpayer
38 unless the amount of the distribution is used to cover qualified
39 catastrophe expenses.

40 (B) No amount is included in income, pursuant to subsection
41 (A) of this section, if the qualified catastrophe expenses of the
42 taxpayer during the taxable year are equal to or greater than the
43 aggregate distributions during the taxable year.

1 (C) If aggregate distributions exceed the qualified catastrophe
2 expenses during the taxable year, the amount otherwise included in
3 income must be reduced by the amount of the distributions for
4 qualified catastrophe expenses.

5 (D)(1) The tax paid pursuant to Section 12-6-510 attributable to
6 a taxable distribution must be increased by two and one-half
7 percent of the amount which is includable in income.

8 (2) This additional tax does not apply if the:

9 (a) taxpayer no longer owns a legal residence that
10 qualifies under Section 12-43-220(C); or

11 (b) distribution is from an account conforming with
12 Section 12-6-1620(B)(3)(c) and is made on or after the date on
13 which the taxpayer attains the age of seventy.

14 (E)(1) No amount is includable in taxable income, pursuant to
15 subsection (A) of this section, if the distribution is from an account
16 conforming with Section 12-6-1620(B)(3)(a) or (b) and is made on
17 or after the date on which the taxpayer attains the age of seventy.

18 (2) If a taxpayer receives a nontaxable distribution under
19 this subsection, the taxpayer must not make further contributions
20 to any Catastrophe Savings Account.

21 (F) If a taxpayer who owns a Catastrophe Savings Account
22 dies, his account is included in the income of the person who
23 receives the account, unless that person is the surviving spouse of
24 the taxpayer. Upon the death of the surviving spouse, the account
25 is included in the income of the person who receives the account.
26 The additional tax in subsection (D) does not apply to distribution
27 on death of the taxpayer or the surviving spouse.”

28
29 SECTION 3. Article 25, Chapter 6, Title 12 of the 1976 Code is
30 amended by adding:

31
32 “Section 12-6-3660. (A) An individual taxpayer is allowed a
33 credit against the tax imposed pursuant to Section 12-6-510 for
34 costs incurred to retrofit, as specified in subsection (B), a structure
35 qualifying as the taxpayer’s legal residence pursuant to Section
36 12-43-220(c) to make it more resistant to loss due to hurricane,
37 rising floodwater, or other catastrophic windstorm event.

38 (B) In order to qualify for the state income tax credit allowed
39 pursuant to this section, costs must not include ordinary repair or
40 replacement of existing items, and must be associated with those
41 fortification measures defined in subsection (C), and must increase
42 the residence’s resistance to hurricane, rising floodwater, or

1 catastrophic windstorm event damage, as defined by the director or
2 his designee by regulation.

3 (C) The fortification measures qualifying for the state income
4 tax credit allowed pursuant to this section must be promulgated by
5 the Department of Insurance in regulations pursuant to the
6 Administrative Procedures Act.

7 (D) The tax credit allowed pursuant to this section for any
8 taxable year must not exceed the lesser of:

9 (1) twenty-five percent of the cost incurred; or

10 (2) one thousand dollars.

11 (E) The cost of items that otherwise qualify for the credit that
12 are purchased with grant funds awarded pursuant to Section
13 38-75-485 are not eligible for this credit if the grants are not
14 included in the income of the taxpayer.

15

16 Section 12-6-3665.(A) An individual taxpayer is allowed a
17 credit from the income tax imposed pursuant to Section 12-6-510
18 for South Carolina state sales or use taxes paid on purchases of
19 tangible personal property used to retrofit the individual's legal
20 residence pursuant to Section 12-6-3660. The credit amount is
21 calculated by multiplying by six percent the purchase price of
22 tangible personal property for which the individual may claim the
23 income tax credit in Section 12-6-3660. The maximum credit
24 allowed under this section is one thousand five hundred dollars.

25 (B) The cost of items that otherwise qualify for the credit that
26 are purchased with grant funds awarded pursuant to Section
27 38-75-485 are not eligible for this credit if the grants are not
28 included in the income of the taxpayer.

29

30 Section 12-6-3670.(A) An individual taxpayer may claim a
31 credit against the income tax imposed pursuant to Section
32 12-6-510 for excess premium paid during the applicable tax year
33 for property and casualty insurance, as defined in Articles 1, 3, and
34 5 of Chapter 75, Title 38, providing coverage on the taxpayer's
35 legal residence pursuant to Section 12-43-220(c).

36 (B) For the purposes of computing the credit allowed by this
37 section, excess premium paid is the amount by which the premium
38 paid exceeds five percent of the taxpayer's adjusted gross income.

39 (C)(1) The credit allowed pursuant to this section for any
40 taxable year may not exceed one thousand two hundred fifty
41 dollars.

1 (2) If the credit allowed under this section exceeds the state
2 income tax liability for the taxable year, any unused credit may be
3 carried forward for five succeeding taxable years.”

4
5 SECTION 4. A. Sections 38-3-10 through 38-3-240 of the 1976
6 Code are designated Article 1, Chapter 3, Title 38 and entitled
7 “General Provisions”.

8
9 B. Chapter 3, Title 38 of the 1976 Code is amended by adding:

10
11 “Article 3
12 Emergency Powers
13

14 Section 38-3-410. (A) If the Governor declares a state of
15 emergency pursuant to Section 1-3-420, the director may issue one
16 or more emergency regulations pursuant to Section 1-23-130(A)
17 applicable to all insurance companies, entities, and persons, as
18 defined in Section 38-1-20, that are subject to Title 38.

19 (B)(1) The provisions of Section 1-23-130(A), (B), and (D) are
20 applicable to emergency regulations promulgated under this
21 section.

22 (2) The provisions of Section 1-23-130(C) are not applicable
23 to emergency regulations promulgated under this section. An
24 emergency regulation promulgated under this section becomes
25 effective upon issuance and continues for one hundred twenty days
26 unless terminated sooner by the director. The director may extend
27 an emergency regulation for additional periods of one hundred
28 twenty days, whether or not the General Assembly is in session,
29 for as long as he determines that the conditions that gave rise to the
30 emergency regulation still exist. Each extension of the emergency
31 regulation must be published in the State Register as provided in
32 Section 1-23-130(D). By concurrent resolution, the General
33 Assembly may terminate an emergency regulation issued under
34 this section.

35 (C) The text of an emergency regulation promulgated under
36 this section together with a statement explaining how the
37 emergency regulation facilitates recovery from the emergency
38 must be published in the State Register as provided in Section
39 1-23-130(D).

40
41 Section 38-3-420. (A) By an emergency regulation issued
42 pursuant to Section 38-3-410, the director may adopt any

1 procedure that facilitates recovery from the emergency and is fair
2 under the circumstances if the:

3 (1) procedure provides at least the procedural protection
4 given by other statutes, the Constitution of this State, or the United
5 States Constitution;

6 (2) department takes only that action necessary to protect the
7 public interest under the emergency procedure; and

8 (3) department publishes in writing, at the time of or before
9 its action, the specific facts and reasons for finding an immediate
10 danger to the public health, safety, or welfare and its reasons for
11 concluding that the procedure used is fair under the circumstances.

12 (B) Subject to applicable constitutional and statutory
13 provisions, an emergency regulation becomes effective
14 immediately on filing. After notice of the emergency regulation is
15 published in the State Register as provided in Section 1-23-130(D)
16 and Section 38-3-410, then the department's findings of immediate
17 danger, necessity, and procedural fairness are judicially reviewable
18 under Section 38-3-210.

19
20 Section 38-3-430. (A) The department may promulgate by
21 emergency regulation, pursuant to Section 38-3-410, standardized
22 requirements that may be applied to insurers as a consequence of a
23 hurricane or other natural disaster. The emergency regulations
24 must address the following areas:

25 (1) claims reporting requirements;

26 (2) grace periods for payment of premiums and performance
27 of other duties by insureds;

28 (3) temporary postponement of cancellations and
29 nonrenewals; and

30 (4) any other rule the director considers necessary.

31 (B) The emergency regulations adopted under this section shall
32 require the department to issue an order within ten days after the
33 occurrence of a hurricane or other natural disaster specifying, by
34 line of insurance, which of the standardized requirements apply,
35 the geographic areas in which they apply, the time at which
36 applicability commences, and the time at which applicability
37 terminates. An order issued pursuant to this subsection must
38 comply with the requirements of Section 1-23-140.

39
40 Section 38-3-440. The department may promulgate the
41 regulations pursuant to the South Carolina Administrative
42 Procedures Act, Chapter 23 of Title 1, necessary to implement the
43 provisions of this article."

1
2 SECTION 5. Chapter 7, Title 38 of the 1976 Code is amended by
3 adding:

4
5 “Section 38-7-200. (A) A licensed insurer providing full
6 property and casualty coverage, to specifically include wind and
7 hail coverage, to property owners within the area defined in
8 Section 38-75-310(5), including any portion of the area as it may
9 be expanded from time to time pursuant to Section 38-75-460, may
10 claim as a nonrefundable credit against the premium tax imposed
11 by Sections 38-7-20 and 38-7-40 in an amount equal to twenty-five
12 percent of the tax that otherwise is due on the premium written for
13 the property owners for the taxable year.

14 (B) The credit allowed by this section is available only to an
15 insurer licensed or authorized to do business in this State with
16 respect to a property and casualty insurance policy providing full
17 coverage as defined in subsection (A).

18 (C) A licensed insurer who claims the credit allowed by this
19 section shall provide information required by the Department of
20 Insurance to demonstrate that the taxpayer is eligible for the credit
21 and that the amount paid for premiums for which the credit is
22 claimed was not excluded from the licensed insurer’s gross income
23 for the taxable year.

24 (D) The tax credit allowed under this section for a taxable year
25 may be claimed only once for any one structure, regardless of the
26 number of policies written on the structure.

27 (E) The department shall take the action necessary to monitor
28 and examine the use of the credits claims under this section.

29 (F) This section applies to all new policies issued with an
30 effective date after December 31, 2007.”

31
32 SECTION 6. Article 9, Chapter 75, Title 38 is amended by
33 adding:

34
35 “Section 38-75-755. (A) All insurers, at the issuance of a new
36 policy and at each renewal, clearly shall notify the applicant or
37 policyholder of a personal lines residential property insurance
38 policy of the availability and the range of each premium discount,
39 credit, other rate differential, or reduction in deductibles for
40 properties on which fixtures or construction techniques
41 demonstrated to reduce the amount of loss in a windstorm have
42 been installed or implemented. The notice must describe generally

1 what measures the policyholders may take to reduce their
2 windstorm premium.

3 (B) All insurers, at the issuance of a new policy and at each
4 renewal of a commercial property insurance policy, shall include a
5 notice that advises the policyholder that a reduction in premium
6 may be available if the policyholder has taken steps to prevent or
7 reduce damage from windstorm and that the policyholder may
8 contact its agent, broker, or insurer for additional information.

9 (C) This section applies to policies issued or renewed after
10 December 31, 2007.”

11

12 SECTION 7. Section 38-3-110 of the 1976 Code is amended by
13 adding at the end:

14

15 “(5) The director must hold a public hearing at least annually at
16 a location within the seacoast area, as defined in Section
17 38-75-310(7), to provide the public with information and an
18 opportunity to discuss and offer input concerning the rates,
19 territory, and other pertinent issues regarding the South Carolina
20 Wind and Hail Underwriting Association. The director must
21 provide notice of the public hearing in newspapers of general
22 circulation within the seacoast area at least thirty days before the
23 date of the public hearing. The director must submit a report to the
24 President Pro Tempore of the Senate and the Speaker of the House
25 of Representatives by no later than January thirty-first of each year
26 regarding the status of the South Carolina Wind and Hail
27 Underwriting Association, including any recommended
28 modifications to statutory or regulatory law regarding the
29 operation of the South Carolina Wind and Hail Underwriting
30 Association and its territory.”

31

32 SECTION 8. Section 38-73-260 of the 1976 Code, as last
33 amended by Act 332 of 2006, is further amended by adding at the
34 end:

35

36 “(F)(1) Nothing in this section prevents the director or his
37 designee from considering the impact on individual territories or
38 individual insureds when determining whether the rate is
39 excessive, inadequate, or unfairly discriminatory. Rate level
40 increases or decreases falling within the limitation specified in this
41 subsection must comply with the requirements of this chapter
42 prohibiting rate increases from being excessive, inadequate, or
43 unfairly discriminatory.

1 (2) With respect to fire, allied lines, and homeowner's rates,
2 the director or his designee shall specifically review all rate filings
3 made on or after June 1, 2007, to ensure that each insurer's rates
4 for policies that exclude wind coverage reflect a discount
5 commensurate with that insurer's previously filed surcharge for
6 policies that include wind coverage.

7 (3) This subsection does not apply to private passenger
8 automobile insurance nor to insurance against liability arising out
9 of the ownership, maintenance, or the use of:

10 (a) an individual private passenger automobile as defined
11 in Section 38-77-30(5.5)(a); or

12 (b) property having wheels."

13
14 SECTION 9. Section 38-73-1095(C) of the 1976 Code is
15 amended to read:

16
17 "(C) Rating plans for essential property insurance in the coastal
18 area or in the seacoast area, ~~may~~ shall include discounts and credits
19 or surcharges and debits calculated upon the following rating
20 factors:

- 21 (1) use of storm shutters;
- 22 (2) use of roof tie downs;
- 23 (3) construction standards;
- 24 (4) building codes;
- 25 (5) distance from water;
- 26 (6) elevation;
- 27 (7) flood insurance;
- 28 (8) policy deductibles; and
- 29 (9) other applicable factors requested by the insurer or rating

30 organization or selected by order of the director involving the risk
31 or hazard. An order issued pursuant to this section must comply
32 with the requirements of Section 1-23-140.

33 The department may by regulation define how the
34 implementation of these factors qualify for credits or discounts.
35 The regulation must specify what evidence or proof the
36 policyholder or applicant shall present to obtain the credit or
37 discount. This section applies to policies issued or renewed after
38 December 31, 2007."

39
40 SECTION 10. Article 5, Chapter 75, Title 38 of the 1976 Code
41 is amended to read:

42
43 "Article 5

1
2 Wind and Hail Insurance
3

4 Section 38-75-310. In this article, unless the context otherwise
5 requires:

6 (1) 'Essential property insurance' means insurance against
7 direct loss to property as defined and limited in the wind and hail
8 insurance policy and forms approved by the director or his
9 designee; and after January 1, 1995, at the request of the insured,
10 coverage for:

- 11 (a) actual loss of business income; ~~or~~
12 (b) additional living expense; or
13 (c) fair rental value loss.

14 ~~Prior to~~ Before November 1, 1994, the South Carolina Wind and
15 Hail Underwriting Association must file with the department for
16 approval additional policy forms defining the terms of and
17 providing coverage for actual loss of business income, additional
18 living expense and fair rental value loss.

19 (2) 'Association' means the South Carolina Wind and Hail
20 Underwriting Association established pursuant to the provisions of
21 this article.

22 (3) 'Plan of operation' means the plan of operation of the
23 association approved or promulgated by the department pursuant
24 to the provisions of this article.

25 (4) 'Insurable property' means immovable property at fixed
26 locations in coastal areas of the State as that term is ~~hereinafter~~
27 defined, or tangible personal property located ~~therein in it~~, which
28 property is determined by the association to be in an insurable
29 condition as determined by reasonable underwriting standards, but
30 not to include farm or manufacturing property, or motor vehicles
31 which are eligible to be licensed for highway use. ~~Any~~ A structure
32 commenced on or after September 15, 1971, not built in substantial
33 compliance with the ~~Southern Standard~~ most recent building code,
34 adopted by the Building Codes Council as referenced in Section
35 6-9-50, or the approved building code in existence at the time of
36 construction or the standards promulgated under the National
37 Manufactured Housing Construction Standards and Safety Act,
38 including the design-wind requirements therein in it, is not an
39 insurable risk under the terms of this article. ~~Any~~ A structure
40 commenced on or after September 15, 1971, ~~shall~~ must comply
41 with any construction and zoning requirements affecting the
42 structure, promulgated or adopted pursuant to the requirements of
43 the Federal Flood Insurance Program.

1 (5) 'Coastal area' means:

2 (a) all areas in Beaufort County and Colleton County which
3 are east of the west bank of the intracoastal waterway;

4 (b) the following areas in Georgetown County: all areas
5 between the Harrell Siau Bridge and ~~Murrells Inlet~~ the
6 Georgetown-Horry County border which are east of a line
7 ~~paralleling and lying one hundred fifty feet east of U.S. Highway~~
8 ~~No. 17 Business, all areas in Murrells Inlet which are east of U.S.~~
9 ~~Highway No. 17 Business, and Cedar Island, North Island, and~~
10 ~~South Island;~~

11 (c) all areas in Horry County east of ~~a line paralleling and~~
12 ~~lying one hundred fifty feet east of U.S. Highway No. 17 Business~~
13 or By-Pass 17, whichever is farther to the west;

14 (d) the following areas in Charleston County: Edisto Island,
15 Edingsville Beach, Kiawah Island, Botany Bay Island, Folly
16 Island, Seabrook Island, Morris Island, and all areas north of the
17 City of Charleston which are east of the west bank of the
18 intracoastal waterway and the following areas:

19 (i) the portion of James Island which is east of the west
20 bank of the James Island Creek;

21 (ii) the portion of John's Island which is east of a line
22 paralleling Exchange Road which becomes Plow Ground Road to
23 Hoopstick Island Road to Church Creek; and

24 (iii) the portion of Wadmalaw Island which is east of a line
25 paralleling Roseville Road to west of Cherry Point Road to
26 Maybank Highway to Brigger Hill Road.

27 (6) 'Net direct premiums' means gross direct premiums
28 excluding reinsurance assumed and ceded written on property
29 other than farm or manufacturing in this State for fire and extended
30 coverage insurance, including the fire and extended coverage
31 components of homeowners policy and commercial multiple peril
32 package policies, less return premiums upon canceled contracts,
33 dividends paid or credited to policyholders, or the unused or
34 unabsorbed portion of premium deposits.

35 (7) 'Seacoast area' means all areas within Horry, Georgetown,
36 Berkeley, Charleston, Dorchester, Colleton, Beaufort, and Jasper
37 Counties.

38

39 Section 38-75-320. The purpose of this article is to ~~provide a~~
40 ~~method whereby wind and hail insurance may be obtained more~~
41 easily and equitably assure an adequate market for wind and hail
42 insurance in the coastal areas of this State.

43

1 Section 38-75-330. (A) There is created the South Carolina
2 Wind and Hail Underwriting Association, an unincorporated
3 association whose responsibilities, liability, and regulations are
4 governed and defined by this article, ~~consisting~~. The association
5 shall function as a residual market mechanism to provide wind and
6 hail insurance for residential and commercial property to
7 applicants who are unable to procure this insurance in the coastal
8 area.

9 (B) The association consists of all private insurers authorized to
10 write and engage in writing property insurance within this State on
11 a direct and statewide basis, but excluding insurers whose writings
12 are limited to property wholly owned by parent, subsidiary, or
13 allied organizations, or insurers whose writings are limited to
14 property wholly owned by religious organizations, ~~provided,~~
15 However, as a condition of exemption from membership ~~such~~
16 these insurers providing property insurance for insurable property
17 in the coastal area as defined by this article ~~shall~~ also shall provide
18 essential property insurance for ~~such~~ these risks. ~~Every such~~ Each
19 insurer must be a member of the association and ~~must~~ shall remain
20 a member of the association so long as the association is in
21 existence as a condition of its authority to continue to transact the
22 business of insurance in this State.

23
24 Section 38-75-340. (A) The association ~~must~~ shall operate
25 pursuant to a plan of operation which ~~shall set forth~~ provides for
26 the following:

27 (1) the number, qualifications, terms of office, and manner
28 of election of the members of the board of directors ~~and shall~~
29 ~~provide for,~~ provided that four members of the board of directors
30 must be consumers who are representative of business
31 policyholders, residential single family dwelling policyholders,
32 and apartment, condominium, or multiple-family dwelling
33 policyholders, and who are selected from recommendations from
34 the members of the legislative delegations from the seacoast area;

35
36 (2) the efficient, economical, fair, and nondiscriminatory
37 administration of the association; ~~and for~~

38 (3) the prompt and efficient provision of essential property
39 insurance in the coastal areas of the State ~~so as to promote orderly~~
40 ~~community development in those areas and to provide means for~~
41 ~~the adequate maintenance and improvement of the property in such~~
42 ~~areas. The plan may include;~~

43 (4) the manner of election of officers;

(5) the establishment of necessary facilities;:
(6) ~~the~~ management of the association, ~~plan for~~;
(7) the assessment of members to defray losses and expenses;:
(8) reasonable underwriting standards, rating subdivisions, and rates including, but not limited to, developing multiple-tiered rates within the coastal area territory that reflect the relative risks of the properties located within a particular tier;
(9) commissions to be paid to agents or brokers;:
(10) procedures for an open, competitive process for the acceptance and cession of reinsurance, ~~procedures provided that the association is not required to follow the provisions of the South Carolina Consolidated Procurement Code, and~~ for determining the amounts of insurance to be provided to specific risks;
(11) time limits and procedures for processing applications for insurance;: and ~~for any~~
(12) other provisions considered necessary by the director or his designee to carry out the purposes of this article.

(B) Insurance effected pursuant to this article ~~shall~~ must have limits of liability provided in the plan of operation. The director or his designee shall approve the limits. Excess insurance is not permitted until the maximum available under the plan has been purchased. ~~Thereafter~~ After that, excess insurance may be purchased and must be included for the purpose of meeting any coinsurance requirement.

(C) The ~~directors board~~ of the association ~~may~~, subject to the approval of the director or his designee, may amend the plan of operation at any time. The director or his designee shall review the plan of operation, ~~including annually. The director or his designee shall review the rate structure and loss experience, not less than once in each calendar year~~ semi-annually in accordance with Section 38-75-400. After review of the plan, the director or his designee may amend the plan ~~upon approval of the directors of the association and the amendment takes effect immediately upon ratification by the board.~~

Section 38-75-350. ~~(a)~~ (A) ~~Any~~ A person having an insurable interest in insurable property is entitled to apply to the association for coverage and for an inspection of the property. The application must be made on behalf of the applicant by a licensed broker or agent authorized by him. ~~Applications~~ An application must be submitted on ~~forms~~ a form prescribed by the association and approved by the director or his designee. The application ~~shall~~

1 must contain a statement as to whether or not there are any unpaid
2 premiums due from the applicant for fire insurance on the
3 property. The term 'insurable interest' as used in this section
4 includes any lawful and substantial economic interest in the safety
5 or preservation of property from loss, destruction, or pecuniary
6 damage.

7 ~~(b)~~(B) If the association determines that the property is
8 insurable and that there is no unpaid premium due from the
9 applicant for prior insurance on the property, the association upon
10 receipt of the premium, or ~~such~~ a portion thereof of it as is
11 prescribed in the plan of operation, shall cause to be issued a
12 policy of essential property insurance for a term of at least one
13 year.

14 ~~(c)~~(C) If the association, for any reason, denies an application
15 and refuses to cause to be issued an insurance policy on insurable
16 property to ~~any~~ an applicant or takes no action on an application
17 within the time prescribed in the plan of operation, the applicant
18 may appeal to the director or his designee and the director or a
19 member of his staff designated by him, after reviewing the facts,
20 may direct the association to issue or cause to be issued an
21 insurance policy to the applicant. In carrying out its duties
22 pursuant to this section, the director or his designee may request,
23 and the association shall provide, any information the director or
24 his designee considers necessary to a determination concerning the
25 reasons for the denial or delay of the application.

26
27 Section 38-75-360. (A) The association, pursuant to the
28 provisions of this article and the plan of operation, and with
29 respect to essential property insurance on insurable property, has
30 the power on behalf of its members to:

31 ~~(a)~~(1) ~~To~~ cause to be issued policies of insurance to
32 applicants;

33 ~~(b)~~(2) ~~To~~ assume reinsurance from its members;

34 ~~(c)~~(3) ~~To~~ cede reinsurance to its members and to purchase
35 reinsurance ~~in behalf of its members.~~ on risks insured by the
36 association in amounts that are in accordance with procedures
37 adopted by the board;

38 (4) receive, hold, and transfer personal and real property in
39 the name of the association;

40 (5) contract for goods and services that reasonably may not
41 be performed by its employees;

42 (6) solicit and accept goods, loans, grants, etc. in the name
43 of the association;

1 (7) borrow funds; and
2 (8) issue bonds, surplus notes, or other debentures.
3 (B) The association, pursuant to the provisions of this article
4 and the plan of operation, and with respect to essential property
5 insurance on insurable property, shall perform other acts necessary
6 or proper to effectuate the purpose of this subsection.
7
8 Section 38-75-370. (A) All members of the association shall
9 participate in its writings, expenses, profits, and losses in the
10 proportion that the net direct premium of the member written in
11 this State during the calendar year two years before the current
12 year bears to the aggregate net direct premiums written in this
13 State by all members of the association, as certified to the
14 association by the department after review of annual statements,
15 other reports, and other statistics which the department considers
16 necessary to provide the information required and which the
17 department is authorized to obtain from a member of the
18 association. After certification by the department, the association
19 may rely on the member company's annual statement in
20 determining the company's participation in profits and losses for
21 each year.
22 (B) Each member's participation in the association must be
23 determined annually in the same manner as the initial
24 determination. An insurer authorized to write and engage in
25 writing insurance, the writing of which requires the insurer to be a
26 member of the association pursuant to Section 38-75-330, becomes
27 a member of the association on January first immediately
28 following the authorization. The determination of the insurer's
29 participation in the association must be made as of the date of the
30 membership in the same manner as for all other members of the
31 association. Member insurers shall receive credit annually for
32 essential property insurance voluntarily written in the coastal area
33 and their participation in the writings of the association must be
34 reduced accordingly. The board of directors shall authorize the
35 method of determining the credit. In order to receive credit for
36 essential property voluntarily written in the coastal area, each
37 member company shall submit its requests by March thirty-first of
38 the year preceding the year for which credit is sought.
39 (C) The assessment of a member insurer after hearing may be
40 ordered deferred in whole or in part upon application by the insurer
41 if, in the opinion of the director or his designee, payment of the
42 assessment would render the insurer insolvent or in danger of
43 insolvency or would otherwise leave the insurer in a condition so

1 that further transaction of the insurer's business would be
2 hazardous to its policyholders, creditors, members, subscribers,
3 stockholders, or the public. If payment of an assessment against a
4 member insurer is deferred by order of the director or his designee
5 in whole or in part, the amount by which the assessment is deferred
6 must be assessed against other member insurers in the same
7 manner as provided in this section. In its order of deferral, or in
8 necessary subsequent orders, the director or his designee shall
9 prescribe a plan by which the assessment so deferred must be
10 repaid to the association by the impaired insurer with interest at the
11 six-month treasury bill rate adjusted semi-annually. Profits,
12 dividends, or other funds of the association to which the insurer is
13 otherwise entitled must not be distributed to the impaired insurer
14 but must be applied toward repayment of an assessment until the
15 obligation has been satisfied. The association shall distribute the
16 repayments, including interest, to the other member insurers on the
17 basis at which assessments were made.

18
19 Section 38-75-375.(A) If a member company perceives an
20 assessment or interest levied by the association to be unjust or
21 illegal, the company shall pay the assessment or interest under
22 protest in writing within thirty days of the assessment or interest
23 charge. Upon receiving this payment, the association shall pay the
24 money collected into the association account and designate the
25 money as having been paid under protest.

26 (B) A member company paying an assessment or interest under
27 protest shall appeal to the association within thirty days after
28 making the payment. If it is determined in that appeal that the
29 assessment or interest was collected unjustly or illegally, the
30 association shall refund the assessment or interest to the payor.

31 (C) If a member company fails to pay an assessment or interest
32 within thirty days of the assessment or interest charge by the
33 association, the company is subject to disciplinary procedures
34 pursuant to Section 38-5-120 or 38-5-130.

35
36 Section 38-75-380. There may be no liability on the part of and
37 no cause of action of any nature may arise against the department
38 or any of its staff or the association or its agents, employees, or any
39 participating insurer for any inspections made hereunder or any
40 statements made in good faith by them in any reports or
41 communications concerning risk submitted to the association or at
42 any administrative hearings conducted in connection ~~therewith~~
43 with it under the provisions of this article.

1 Section 38-75-385. There is no liability on the part of, and no
2 cause of action of any nature may arise against, any member
3 insurer, the association's agents or employees, the board of
4 directors, or the director, his designees, or his representatives for
5 any act or omission in the performance of their powers and duties
6 under this article. This section does not relieve the association of
7 any of its liability.

8
9 Section 38-75-386. No liability on the part of, and no cause of
10 action of any nature may arise against, the director, the Department
11 of Insurance or its staff, the association, any member insurer, the
12 association's agents or employees, its board of directors, or the
13 legal representatives of any of the above persons, for any act or
14 omission made in good faith or for any statement made to, or for
15 information provided to, any insurer regarding rates; premiums;
16 classifications; cancellations, determinations, or nonrenewals of
17 coverage; underwriting; inspections; or claims experience history
18 made to facilitate the underwriting of essential property insurance
19 for risks in the coastal area by private insurers or to facilitate
20 competition for the underwriting of essential property insurance
21 for risks in the coastal area among private insurers.

22
23 Section 38-75-390. ~~Any~~ A member of the association who is
24 designated to receive and write essential property insurance from
25 or through the association shall ~~cede~~ one hundred percent ~~cede~~ to
26 the association ~~that~~ the essential property insurance.

27
28 Section 38-75-400. (A) The rates, rating plans, and rating rules
29 applicable to the insurance written by the association are those
30 approved for use of the association by the director or his designee.
31 Surcharges may be used as approved by the director or his
32 designee. Rates may include rules for classification of risks
33 insured ~~hereunder~~ under the provisions of this article and rate
34 modifications ~~thereof~~ of it.

35 (B) As a residual market mechanism, the association is not
36 intended to offer rates competitive with the admitted market.
37 Rates for policies issued by the association must be adequate and
38 established at a level that permits the association to operate as a
39 self-sustaining mechanism. The association shall maintain the
40 necessary rate-making data in order to permit the actuarial
41 determination of rates and rating plans appropriate for the business
42 insured by the association. The association shall monitor rate
43 adequacy and shall notify the director semi-annually to enable the

1 director to take corrective action by an order. Rates adjusted by a
2 corrective action order are exempt from the twelve-month
3 limitation requirement of Section 38-73-920. The corrective action
4 order is subject to judicial review by the Administrative Law
5 Court.

6
7 Section 38-75-410. (A) A person insured pursuant to this article
8 or his representative or a member company who is aggrieved by an
9 act, ruling, or decision of the association:

10 (1) regarding rates, classification of risks, assessments,
11 voluntary credits, cancellation or termination of policies, or
12 underwriting shall appeal to the director or his designee within
13 sixty days after the act, ruling, or decision;

14 (2) other than those specified in item (1), may appeal to the
15 director or his designee within thirty days after the act, ruling, or
16 decision.

17 (B) ~~Hearings~~ A hearing held by the director or his designee
18 pursuant to this section must be in accordance with the procedures
19 set forth in Chapter 3, Title 38 and Article 3, Chapter 23, Title 1,
20 'Administrative Procedures'.

21
22 Section 38-75-420. All reports of inspection performed by or on
23 behalf of the association must be made available to the members of
24 the association, applicants, agent, ~~or~~ broker, and the department.

25
26 Section 38-75-430. The association shall file with the
27 department by March thirty-first of each year a statement which
28 summarizes the transactions, conditions, operations, and affairs of
29 the association during the preceding fiscal year ending October
30 thirty-first. The statement ~~shall~~ must contain any matters and
31 information prescribed by the department and must be in the form
32 required by it. The department may at any time require the
33 association to furnish to it any additional information with respect
34 to its transactions or any other matter which it considers material to
35 assist it in evaluating the operation and experience of the
36 association.

37
38 Section 38-75-440. The department may make an examination
39 into the affairs of the association and in undertaking the
40 examination may hold a public hearing. The expense of the
41 examination must be borne and paid by the association.

1 Section 38-75-450. The department has authority to make
2 reasonable regulations, not inconsistent with law, to enforce, carry
3 out, and make effective the provisions of this article after notice
4 and hearing before the Administrative Law Judge Division.

5
6 ~~Section 38-75-460. The director or his designee, by written~~
7 ~~order, temporarily may expand the area in which the association~~
8 ~~shall provide essential property insurance. The director or his~~
9 ~~designee shall find and declare the existence of an emergency~~
10 ~~because of the unavailability of coastal property insurance or other~~
11 ~~unavailability of coastal property insurance on a reasonable basis~~
12 ~~through normal channels. The order must include the surveys of~~
13 ~~the market conducted in order to make the determination. The~~
14 ~~director or his designee may expand the area in which the~~
15 ~~association shall provide essential property insurance to the whole~~
16 ~~area or just part of the area. The director may expand the area by~~
17 ~~construction type or age of construction. The area may not be~~
18 ~~expanded further than the seacoast territory as defined in Section~~
19 ~~38-75-310(7) and may not be expanded to cover the area for more~~
20 ~~than twenty-four months. If the director or his designee issues an~~
21 ~~order that expands the area in which the association provides~~
22 ~~essential property insurance, he shall notify the General Assembly~~
23 ~~of that order and he shall recommend to the General Assembly any~~
24 ~~appropriate statutory changes in the law concerning the definition~~
25 ~~of 'coastal area' which he believes needs to be enacted.~~

26 (A) In order to maintain stability in the property insurance
27 market and to assure the continued, consistent availability of
28 essential property insurance coverage in the coastal area, the
29 Director of the Department of Insurance, who is selected as
30 defined in Section 38-1-20(16), or his designee, by written order
31 complying with the requirements of Section 1-23-140, may expand
32 the coastal area in which the association shall provide essential
33 property insurance for periods up to twenty-four months. The
34 order is subject to renewal by the director but no renewal shall
35 exceed twenty-four months. In determining whether expansion of
36 the coastal area is warranted, the director or his designee shall
37 consider:

38 (1) changes in the number of insurers writing essential
39 property insurance in the seacoast area and the capacity of those
40 insurers including, but not limited to, the number of policies those
41 insurers have cancelled or nonrenewed, as provided in Sections
42 38-75-730, 38-75-740, and 38-75-1160, during the previous twelve
43 months;

1 (2) changes in the extent to which (a) nonadmitted or surplus
2 lines insurers, or (b) South Carolina Coastal Captive Insurance
3 Companies, pursuant to Article 5 of Chapter 90 of Title 38, are
4 providing essential property insurance in the seacoast area;

5 (3) changes in reinsurance activity impacting insurers
6 writing essential property insurance in the seacoast area;

7 (4) changes in the demand for property insurance in the
8 seacoast area; and

9 (5) any other information considered relevant to effectuate
10 the purpose of this chapter including, but not limited to, the
11 availability of essential property insurance coverage for insurable
12 property that is within the coastal area and is located in a Coastal
13 Barrier Resource Act (CBRA) zone.

14 (B) The director or his designee shall find and declare the
15 existence of conditions that threaten to destabilize the property
16 insurance market and jeopardize the continued, consistent
17 availability of essential property insurance in the seacoast area.
18 The director or his designee shall utilize market surveys, data calls,
19 catastrophe models, reinsurance information, and other objective
20 sources to support the order of expansion.

21 (C)(1) The director or his designee may expand the coastal area
22 in which the association shall provide essential property insurance.
23 The expansion may encompass a portion of the seacoast area or the
24 entire seacoast area, but may not extend further than the seacoast
25 area. The area must not be expanded more than reasonably
26 necessary to ensure a stable property insurance market.

27 (2) In expanding the coastal area, the director or his designee
28 may provide for the coastal area territory to be divided into
29 multiple tiers to allow the association to develop multiple-tiered
30 rates that reflect the relative risks of the properties located within a
31 particular tier.

32 (3) An expansion of the coastal area is subject to the plan of
33 operation as amended and approved by the director or his designee.

34 (4) The director or his designee shall report any expansion of
35 the coastal area to the General Assembly within thirty days of the
36 order of expansion or upon commencement of the next term of the
37 General Assembly, if expansion occurs when the General
38 Assembly is not in session. The General Assembly may approve,
39 revise, or vacate any expansion order by passage of a joint
40 resolution.

41 (D) On the effective date of this section, the General Assembly
42 ratifies the director's May 23, 2007 coastal area expansion order

1 and the multiple-tier structure described in the order for the time
2 period stated in the order and authorized by this section.”

3
4 SECTION 11. Article 8, Chapter 75, Title 38 of the 1976 Code
5 is amended to read:

6
7 “Article 8

8
9 Advisory Committee to the Director and the South Carolina
10 Building Codes Council ~~and~~, Loss Mitigation Grant Program,
11 and South Carolina Comprehensive Hurricane
12 Damage Mitigation Program
13

14 Section 38-75-470. (A) The Director of Insurance shall appoint
15 an advisory committee to the director and the South Carolina
16 Building Codes Council to study issues associated with the
17 development of strategies for reducing loss of life and mitigating
18 property losses due to hurricane, earthquake, and fire. The
19 advisory committee also ~~must~~ shall consider the costs associated
20 with these strategies to individual property owners. The advisory
21 committee ~~must include~~ is composed of:

22 (1) the director or his designee;

23 (2) the Chairman of the Building Codes Council or his
24 designee;

25 (3) ~~one~~ a representative from Clemson University involved
26 with wind engineering;

27 ~~(2)(4) one~~ a representative from an academic institution
28 involved with the study of earthquakes;

29 ~~(3) one representative from the Department of Insurance;~~

30 ~~(4)(5) one~~ a representative from an insurer writing property
31 insurance in South Carolina;

32 ~~(5)(6) one~~ a representative from the Department of
33 Commerce;

34 ~~(6)(7) one~~ a representative from the ~~Federal Emergency~~
35 ~~Management~~ South Carolina’s Municipal Association;

36 (8) a representative from the South Carolina Association of
37 Counties;

38 ~~(7)(9) one~~ a representative from the Homebuilders
39 Association;

40 ~~(8)(10) one~~ a representative from the Manufactured Housing
41 Institute of South Carolina;

42 ~~(9)(11) one~~ a representative from the State Fire Marshal’s
43 office;

1 ~~(40)(12)~~ ~~one~~ a representative from the South Carolina
2 Emergency Management Division;
3 ~~(41)(13)~~ ~~one~~ a representative from the State Flood Mitigation
4 Program;
5 ~~(12)(14)~~ ~~three~~ two at-large members appointed by the
6 director; ~~and~~
7 ~~(13)(15)~~ ~~three~~ two at-large members appointed by the
8 Governor;
9 (16) a general contractor;
10 (17) a representative from the South Carolina Association of
11 Realtors; and
12 (18) a structural engineer.

13 (B) Members shall serve for terms of two years and shall
14 receive no per diem, mileage, or subsistence. Vacancies must be
15 filled in the same manner as the original appointment.

16 (C) Within thirty days after its appointment, the advisory
17 committee shall meet at the call of the Director of Insurance. The
18 advisory committee shall elect from its members a chairman and a
19 secretary and shall adopt rules not inconsistent with this chapter.
20 Meetings may be called by the chairman on his own initiative and
21 must be called at the request of three or more members of the
22 advisory committee. All members ~~shall~~ must be notified by the
23 chairman of the time and place of the meeting at least seven days
24 in advance of the meeting. All meetings must be open to the
25 public. At least two-thirds vote of those members in attendance at
26 the meeting shall constitute an official decision of the advisory
27 committee. Implementation of this program and continued
28 existence of this program is subject to the availability of funding
29 through legislative appropriations or alternative funding sources.
30

31 Section 38-75-480.(A) There is established within the
32 Department of Insurance a loss mitigation grant program. Funds
33 may be appropriated to the grant program, and any funds ~~so~~
34 appropriated ~~shall~~ must be used for the purpose of making grants
35 to local governments or for the study and development of
36 strategies for reducing loss of life and mitigating property losses
37 due to hurricane, flood, earthquake, and fire. Grants to local
38 governments ~~shall~~ must be for the following purposes:

39 (1) implementation of building code enforcement programs
40 including preliminary and ongoing training of inspectors;

41 (2) conducting assessments to determine need for and
42 desirability of making agreements to provide enforcement services
43 pursuant to Section 6-9-60; and

1 (3) providing technical assistance to and acting as an
2 information resource for local governments in the development of
3 proactive hazard mitigation strategies as they relate to reducing the
4 loss of life and mitigating property losses due to natural hazards to
5 include hurricane, flood, earthquake, and fire.

6 (B) Funds may be appropriated for a particular grant only after
7 a majority affirmative vote on each grant by the advisory
8 committee.

9 ~~(B)~~(C) The Department of Insurance may make application and
10 enter into contracts for and accept grants in aid from federal and
11 state government and private sources for the purposes of:

12 (1) implementation of building code enforcement programs
13 including preliminary and ongoing training of inspectors;

14 (2) conducting assessments to determine need for and
15 desirability of making agreements to provide enforcement services
16 pursuant to Section 6-9-60; ~~and~~

17 (3) study and development of strategies for reducing loss of
18 life and mitigating property losses due to hurricane, flood,
19 earthquake, and fire; and

20 (4) any other purposes consistent with this article.

21
22 Section 38-75-485. (A) There is established within the
23 Department of Insurance, the South Carolina Hurricane Damage
24 Mitigation Program. The advisory council, established pursuant to
25 Section 38-75-470, shall provide advice and assistance to the
26 program administrator with regard to his administration of the
27 program.

28 (B) This section does not create an entitlement for property
29 owners or obligate the State in any way to fund the inspection or
30 retrofitting of residential property in this State. Implementation of
31 this program is subject to annual legislative appropriations.

32 (C) The program shall develop and implement a comprehensive
33 and coordinated approach for hurricane damage mitigation that
34 includes the following:

35 (1) The program administrator shall apply for financial
36 grants to be used to assist single-family, site-built or manufactured
37 or modular, owner-occupied, residential property owners to retrofit
38 their properties to make them less vulnerable to hurricane damage.

39 (a) To be eligible for a grant, a residential property must:

40 (i) have been granted a homestead exemption;

41 (ii) be a dwelling with an insured value of three
42 hundred thousand dollars or less; and

1 (iii) have undergone an acceptable wind certification and
2 hurricane mitigation inspection.

3 (b) All grants must be matched on a dollar-for-dollar basis
4 for a total of ten thousand dollars for the mitigation project with
5 the state's contribution not to exceed five thousand dollars.

6 (c) The program must create a process in which mitigation
7 contractors agree to participate and seek reimbursement from the
8 State and homeowners selected from a list of participating
9 contractors. All mitigation must be based upon the securing of all
10 required local permits and inspections. Mitigation projects are
11 subject to random reinspection of up to at least ten percent of all
12 projects.

13 (d) Matching fund grants also must be made available to
14 local governments and nonprofit entities for projects that reduce
15 hurricane damage to single-family, site-built or manufactured or
16 modular owner-occupied, residential property.

17 (e) Grants may be used for the following improvements:

18 (i) roof deck attachment;
19 (ii) secondary water barrier;
20 (iii) roof covering;
21 (iv) brace gable ends;
22 (v) reinforce roof-to-wall connections;
23 (vi) opening protection;
24 (vii) exterior doors, including garage doors;
25 (viii) tie downs;
26 (ix) problems associated with weakened trusses,
27 studs, and other structural components;

28 (x) inspection and repair or replacement of
29 manufactured home piers, anchors, and tiedown straps; and

30 (xi) any other mitigation techniques approved by the
31 advisory committee.

32 (f)(i) Low-income homeowners, who otherwise meet the
33 requirements of subitems (a) and (c) are eligible for a grant of up
34 to five thousand dollars and are not required to provide a matching
35 amount to receive the grant. These grants must be used to retrofit
36 single-family, site-built or manufactured or modular,
37 owner-occupied, residential properties, valued at one hundred fifty
38 thousand dollars or less, in order to make them less vulnerable to
39 hurricane damage.

40 (ii) For purposes of this item, 'low-income persons'
41 means one or more natural persons or a family, the total annual
42 adjusted gross household income of which does not exceed eighty
43 percent of the median annual adjusted gross income for households

1 within the county in which the person or family resides, whichever
2 is greater.

3 (2) The department shall define by regulation the details of
4 the mitigation measures necessary to qualify for the grants or
5 public assistance described in this section.

6 (3) Multimedia public education, awareness, and advertising
7 efforts designed to specifically address mitigation techniques must
8 be employed, as well as a component to support ongoing consumer
9 resources and referral services.

10 (4) The department shall use its best efforts to obtain grants
11 or funds from the federal government to supplement the financial
12 resources of the program. In addition to state appropriations, if
13 any, this program must be implemented by the department through
14 the use of the premium taxes due to this State by the South
15 Carolina Wind and Hail Underwriting Association, and one
16 percent of the premium taxes collected annually and remitted to
17 the Department of Insurance.

18 (5) The director or his designee may promulgate regulations
19 necessary to implement the provisions of this article.

20
21 Section 38-75-490.(A) The Department of Insurance, in
22 consultation with the Department of Consumer Affairs, the
23 Department of Commerce, the Federal Alliance for Safe Homes,
24 the Manufactured Housing Institute of South Carolina, South
25 Carolina Building Codes Council, the Home Builders Association
26 of South Carolina, the Civil Engineering Department of Clemson
27 University, and the Institute for Business and Homes Safety shall
28 study and prepare a proposal to develop an objective rating system
29 that will allow homeowners to evaluate the relative ability of South
30 Carolina's coastal properties to withstand the wind load from a
31 hurricane.

32 (B) The rating system must be designed in a manner the
33 property owner may easily understand, based on proven readily
34 verifiable mitigation techniques and devices, and able to be
35 implemented through a visual inspection program. The rating
36 system must be designed to facilitate a home inspection process to
37 determine a home's existing as well as projected wind resistance
38 capabilities.

39 (C) The rating system must contemplate the use of certified
40 wind resistance and loss mitigation inspectors.

41 (D) The department must provide a report to the Governor, the
42 President Pro Tempore of the Senate, and the Speaker of the House
43 of Representatives by March 5, 2008, detailing the nature and

1 construction of the rating scale, its projected effectiveness based
2 on implementation in a pilot program, an operational plan for
3 statewide implementation of the rating scale, and any
4 recommendations for additional legislation.”
5

6 SECTION 12. Section 38-75-1140(C) of the 1976 Code, as
7 added by Act 290 of 2004, is amended to read:

8
9 “(C) The modeling organization shall submit a supplemental
10 report to the director or his designee following any substantially
11 material revision of the model if the revision is used by insurers in
12 determining rates for this State. The supplemental report must
13 specify the changes made to the catastrophe model, specify a list of
14 variables that are subject to insurer input, and contain one or more
15 statements by experts attesting to the continuing validity of the
16 model for use in predicting losses associated with natural hazard
17 catastrophes in this State.”
18

19 SECTION 13. Section 38-75-1140 of the 1976 Code, as added
20 by Act 290 of 2004, is amended by adding at the end:

21
22 “(G)(1) To recover the costs associated with the review and
23 evaluation of catastrophe models, the director or his designee may
24 impose a filing fee on:

25 (a) all insurers who use catastrophe or other computer
26 simulated models; and

27 (b) modelers or modeling organizations that submit a
28 model to the department for its review, evaluation, or approval.
29 This fee must be retained by the department to defray the costs of
30 retaining actuaries and other experts to evaluate such models.

31 (2) The fees collected pursuant to this section must be used
32 only to offset expenses associated with the review of catastrophe
33 models.”
34

35 SECTION 14. Sections 38-75-730 and 38-75-740 of the 1976
36 Code are amended to read:

37
38 “Section 38-75-730. (a) No insurance policy or renewal
39 thereof may be cancelled by the insurer prior to the expiration of
40 the term stated in the policy, except for one of the following
41 reasons:

42 (1) nonpayment of premium;

1 (2) material misrepresentation of fact which, if known to the
2 company, would have caused the company not to issue the policy;

3 (3) substantial change in the risk assumed, except to the
4 extent that the insurer should reasonably have foreseen the change
5 or contemplated the risk in writing the policy;

6 (4) substantial breaches of contractual duties, conditions, or
7 warranties;

8 (5) loss of the insurer's reinsurance covering all or a
9 significant portion of the particular policy insured, or where
10 continuation of the policy would imperil the insurer's solvency or
11 place that insurer in violation of the insurance laws of this State.
12 Prior to cancellation for reasons permitted in this item (5), the
13 insurer shall notify the director or his designee, in writing, at least
14 sixty days prior to such cancellation and the director or his
15 designee shall, within thirty days of such notification, approve or
16 disapprove such action.

17 (b) Cancellation under item (1) of subsection (a) of this section
18 is not effective unless written notice of cancellation has been
19 delivered or mailed to the insured and the agent of record, if any,
20 not less than ten days prior to the proposed effective date of
21 cancellation. Cancellation under items (2) through (5) of
22 subsection (a) of this section is not effective unless written notice
23 of cancellation has been delivered or mailed to the insured and the
24 agent of record, if any, not less than thirty days prior to the
25 proposed effective date of cancellation. The notice must be given
26 or mailed to the insured and the agent at their addresses shown in
27 the policy or, if not reflected therein, at their last known addresses.
28 Any notice of cancellation shall state the precise reason for
29 cancellation. Proof of mailing is sufficient proof of notice.

30 (c) Subsections (a) and (b) of this section do not apply to any
31 insurance policy which has been in effect for less than one hundred
32 and twenty days and is not a renewal of a previously existing
33 policy. The policy may be cancelled for any reason by furnishing
34 to the insured at least thirty days' written notice of cancellation,
35 except where the reason for cancellation is nonpayment of
36 premium, in which case not less than ten days' written notice must
37 be furnished.

38 (d) For purposes of item (3) of subsection (a), substantial
39 change in the risk assumed, if based upon changes in climatic
40 conditions, must be based on statistical data relative to South
41 Carolina that has been approved by the director or his designee as
42 a basis for substantial change in the risk assumed.
43

1 Section 38-75-740. (a) No insurance policy may be
2 nonrenewed by an insurer except in accordance with the provisions
3 of this section or Section 38-75-730, and any nonrenewal
4 attempted which is not in compliance with this section or Section
5 38-75-730 is ineffective.

6 (b) A policy written for a term of one year or less may be
7 nonrenewed by the insurer at its expiration date by giving or
8 mailing written notice of nonrenewal to the insured and the agent
9 of record, if any, not less than ~~thirty~~ sixty days prior to the
10 expiration date of the policy for any nonrenewal that would be
11 effective between November first and May thirty-first and not less
12 than ninety days for any nonrenewal that would be effective
13 between June first and October thirty-first.

14 (c) Subject to subsection (c) of Section 38-75-760, a policy
15 written for a term of more than one year or for an indefinite term
16 may be nonrenewed by the insurer at its anniversary date by giving
17 or mailing written notice of nonrenewal to the insured and the
18 agent of record, if any, not less than ~~thirty~~ sixty days prior to the
19 anniversary date of the policy for any nonrenewal that is effective
20 between November first and May thirty-first and not less than
21 ninety days prior to the anniversary date of the policy for any
22 nonrenewal that is effective between June first and October thirty-
23 first.

24 (d) The notice required by this section must be given or mailed
25 to the insured and the agent at their addresses shown in the policy
26 or, if not reflected therein, at their last known addresses. Proof of
27 mailing is sufficient proof of notice.

28 (e) Any notice of nonrenewal shall state the precise reason for
29 nonrenewal.”

30
31 SECTION 15. Section 38-75-1160 of the 1976 Code is amended
32 to read:

33
34 “Section 38-75-1160. (A)(1) A Except for a cancellation
35 pursuant to Section 38-75-730, a cancellation or refusal to renew
36 by an insurer of a policy of insurance covered in this article is not
37 effective unless the insurer delivers or mails to the named insured
38 at the address shown in the policy a written notice of the
39 cancellation or refusal to renew. This notice must:

40 (a) be approved as to form by the director or his designee
41 before use;

42 (b) state the date not less than ~~thirty~~ sixty days for any
43 cancellation or refusal to renew that is effective between

1 November first and May thirty-first and not less than ninety days
2 for any cancellation or refusal to renew that is effective between
3 June first and October thirty-first after the date of the mailing or
4 delivering on which the cancellation or refusal to renew becomes
5 effective;

6 (c) state the specific reason of the insurer for cancellation
7 or refusal to renew and provide for the notification required by
8 Section 38-75-1180(B);

9 (d) inform the insured of his right to request in writing
10 within ~~fifteen~~ thirty days of the receipt of notice that the director
11 review the action of the insurer. The notice of cancellation or
12 refusal to renew must contain the following statement in bold print
13 to inform the insured of this right:

14 'IMPORTANT NOTICE: Within ~~fifteen~~ thirty days of
15 receiving this notice, you or your attorney may request in writing
16 that the director review this action to determine whether the insurer
17 has complied with South Carolina laws in canceling or
18 nonrenewing your policy. If this insurer has failed to comply with
19 the cancellation or nonrenewal laws, the director may require that
20 your policy be reinstated. However, the director is prohibited from
21 making underwriting judgments. If this insurer has complied with
22 the cancellation or nonrenewal laws, the director does not have the
23 authority to overturn this action.'

24 (e) inform the insured of the possible availability of other
25 insurance which may be obtained through his agent, or through
26 another insurer; and

27 (f) state that the Department of Insurance has available a
28 buyer's guide regarding property insurance shopping and
29 availability, and provide applicable mailing addresses and
30 telephone numbers, including a toll-free number, if available, for
31 contacting the Department of Insurance.

32 (2) Nothing in this subsection prohibits any insurer or agent
33 from including in the notice of cancellation or refusal to renew,
34 any additional disclosure statements required by state or federal
35 laws, or any additional information relating to the availability of
36 other insurance.

37 (B) Subsection (A) does not apply if the:

38 (1) insurer has manifested to the insured its willingness to
39 renew by actually issuing or offering to the insured to issue a
40 renewal policy, certificate, or other evidence of renewal, or has
41 manifested this intention to the insured by another means;

1 (2) named insured has demonstrated by some overt action to
2 the insurer or its agent that he expressly intends that the policy be
3 canceled or that it not be renewed; or

4 (3) the notice of cancellation or refusal to renew by an
5 insurer regarding private passenger automobile insurance or to
6 insurance against liability arising out of ownership, maintenance,
7 or use of:

8 (a) an individual private passenger automobile as defined
9 in Section 38-77-30(5.5)(a); or

10 (b) property having wheels.”

11
12 SECTION 16. Chapter 90, Title 38 of the 1976 Code is amended
13 by adding:

14
15 “Article 5

16
17 South Carolina Coastal Captive Insurance Companies

18
19 Section 38-90-810. This article may be cited as the ‘South
20 Carolina Coastal Captive Insurance Company Act’.

21
22 Section 38-90-820. For purposes of this article:

23 (1) ‘Peril’ means the cause of an insured loss.

24 (2) ‘South Carolina coastal captive insurance company’
25 means a captive insurance company, as it is defined by Section
26 38-90-10(8), that is specifically formed to provide wind and storm
27 surge property insurance coverage in this State.

28 (3) ‘Storm surge’ means a temporary rise in sea-level
29 accompanying a hurricane or other intense storm that is associated
30 with the hurricane’s or storm’s low barometric pressure and winds,
31 and that is usually measured as the difference between the
32 observed sea-level height and the normal sea-level height, such as
33 the level that would have occurred in the absence of the storm,
34 taking into account the predicted tide.

35 (4) ‘Wind’ means windstorms, cyclones, hurricanes,
36 tornadoes, high winds, and hail, and similar perils not normally
37 among those covered under most property insurance policies but
38 obtainable through the purchase of wind, wind and hail, storm or
39 windstorm coverage, or both.

40
41 Section 38-90-830.(A) A South Carolina coastal captive
42 insurance company, if permitted by its articles of incorporation or
43 organization, operating agreement, or charter, may apply to the

1 director for a license to write primary and excess wind and storm
2 surge insurance covering property within the State of South
3 Carolina, and may not write insurance covering any other perils
4 nor may it write insurance coverage in any other state.

5 (B) A South Carolina coastal captive insurance company that
6 qualified as an association captive under the provisions of Section
7 38-90-10(3) is exempt from the requirement that the association be
8 in existence for one year so long as the association is in good
9 standing as an entity upon becoming an owner of a South Carolina
10 coastal captive insurance company.

11 (C) A South Carolina coastal captive insurance company is
12 exempt from the provisions of Section 38-90-20(A)(5) that
13 prohibit a captive insurance company from providing personal
14 homeowners insurance coverage so long as the coverage is limited
15 to the perils described in Section 38-90-820(3) and (4).

16 (D)(1) A South Carolina coastal captive insurance company
17 formed as a sponsored captive insurance company:

18 (a) is exempt from the provisions of Section 38-90-220
19 that require that the business written by a sponsored captive
20 insurance company, with respect to each protected cell, must be
21 fronted by an insurance company license pursuant to the laws of:

22 (i) a state; or

23 (ii) a jurisdiction if the insurance company is a wholly
24 owned subsidiary of an insurance company licensed pursuant to
25 the laws of any state; provided that the South Carolina coastal
26 captive insurance company also meets the requirements of
27 subsection (E) of this section.

28 (b) may create a protected cell as a legal person separate
29 from the protected cell company and may organize a protected cell
30 under any incorporation or organization option available under
31 Section 38-90-60, unless the director finds such option is not
32 feasible pursuant to Section 38-90-860(B);

33 (c) may have as its sponsor an association formed to
34 address coastal property and insurance issues.

35 (2) A South Carolina coastal captive insurance company
36 may issue directly its own policies to insureds.

37 (E) Any South Carolina coastal captive insurance company that
38 otherwise qualifies for the limited exemption from the provisions
39 of Section 38-90-220 pursuant to subsection (D)(1) of this section
40 and any South Carolina coastal captive insurance company,
41 regardless of form, that issues policies directly to the public shall
42 comply with the following:

1 (1) It shall not expose itself to a loss on one risk in an
2 amount exceeding ten percent of its surplus to policyholders and
3 any risk or portion of it which has been reinsured must be deducted
4 in determining this limitation of risk;

5 (2) It shall not have loss reserves in excess of five times its
6 surplus to policyholders;

7 (3) It shall not have net premiums written in excess of three
8 times its surplus to policyholders and any risk or portion of it
9 which has been reinsured must be deducted in determining this
10 limitation of risk; and

11 (4) It shall file quarterly and annual statements with the
12 department in accordance with statutory accounting principles on
13 forms and in the manner prescribed by Section 38-13-80 and in
14 conformity with the requirements of Section 38-13-85 with useful
15 or necessary modifications as required and approved by the
16 director as contained in Section 38-90-70.

17 (F) To conduct business in this State, a South Carolina coastal
18 captive insurance company shall:

19 (1) obtain from the director a license authorizing it to
20 conduct business as a South Carolina coastal captive insurance
21 company in this State;

22 (2) hold at least one meeting of its governing body each year
23 in this State;

24 (3) maintain its principal place of business in this State;

25 (4) appoint a registered agent to accept service of process
26 and act otherwise on its behalf in this State; and

27 (5) name the director as the agent for the South Carolina
28 coastal captive insurance company upon whom process, notice, or
29 demand may be served if a registered agent, with reasonable
30 diligence, is not located and served.

31 (G) Before receiving a license, a South Carolina coastal captive
32 insurance company shall file with the director:

33 (1) a certified copy of its organizational documents;

34 (2) a statement under oath of its president and secretary or
35 other persons considered appropriate by the director showing its
36 financial condition; and

37 (3) other documents required by the director.

38 (H) In addition to the information required by subsection (G),
39 the applicant South Carolina coastal captive insurance company
40 shall file with the director evidence of:

41 (1) the amount and liquidity of its assets relative to the risks
42 to be assumed;

1 (2) the adequacy of the expertise, experience, and character
2 of the person who manages it;

3 (3) the overall soundness of its plan of operation;

4 (4) the adequacy of loss prevention programs;

5 (5) other overall factors considered relevant by the director
6 in ascertaining if the proposed South Carolina coastal captive
7 insurance company is able to meet its policy obligations; and

8 (6) any information required by Section 38-90-20
9 specifically applicable to the form of the South Carolina coastal
10 captive insurance company, and fees prescribed by that section.

11 (I) Information submitted pursuant to this section is
12 confidential as provided in Section 38-90-35, except that
13 information is discoverable by a party in a civil action or contested
14 case to which the South Carolina coastal captive insurance
15 company that submitted the information is a party, upon a finding
16 by the court that:

17 (1) the captive insurance company is a necessary party to the
18 action and not joined only for the purposes of evading the
19 confidentiality provisions of this chapter;

20 (2) the information sought is relevant, material to, and
21 necessary for the prosecution or defense of the claim asserted in
22 litigation; and

23 (3) the information sought is not available through another
24 source.

25
26 Section 38-90-840. (A)(1) The director may not issue a license
27 to a South Carolina coastal captive insurance company unless the
28 company possesses and maintains unimpaired paid-in capital of
29 not less than one million dollars; however, in the case of a South
30 Carolina coastal captive insurance company formed as a sponsored
31 captive insurance company that does not assume any risk, where
32 the risks insured by the protected cells are homogeneous, the
33 director may reduce this amount to an amount not less than five
34 hundred thousand dollars.

35 (2)(a) Except for a South Carolina coastal captive insurance
36 company formed as a sponsored captive insurance company that
37 does not assume any risk, the capital must be in the form of cash,
38 cash equivalent, or an irrevocable letter of credit issued by a bank
39 chartered by this State or a member bank of the Federal Reserve
40 System with a branch office in this State or as approved by the
41 director.

42 (b) For a South Carolina coastal captive insurance
43 company formed as a sponsored captive insurance company that

1 does not assume any risk, the capital also may be in the form of
2 other high quality securities as approved by the director.

3 (B) For purposes of subsection (A), the director may issue a
4 license expressly conditioned upon the South Carolina coastal
5 captive insurance company providing to the director satisfactory
6 evidence of possession of the minimum required unimpaired
7 paid-in capital. Until this evidence is provided, the captive
8 insurance company may not issue a policy, assume any liability, or
9 otherwise provide coverage. The director summarily may revoke
10 the conditional license without legal recourse by the company if
11 satisfactory evidence of the required capital is not provided within
12 a maximum period of time, not to exceed one year, to be
13 established by the director at the time the conditional license is
14 issued.

15 (C) The director may prescribe additional capital or, net assets
16 based upon the type, volume, and nature of insurance business
17 transacted. Contributions in connection with these prescribed
18 additional net assets or capital must be in the form of:

19 (1) cash;

20 (2) cash equivalent;

21 (3) an irrevocable letter of credit issued by a bank chartered
22 by this State or a member bank of the Federal Reserve System with
23 a branch office in this State or as approved by the director.

24 (D) Section 38-90-100(C) does not apply and loans to its parent
25 company and affiliates are prohibited.

26 (E)(1) A South Carolina coastal captive insurance company
27 may not pay a dividend out of, or other distribution with respect to,
28 capital or surplus, in excess of the limitations set forth in Section
29 38-21-250 through Section 38-21-270, without the prior approval
30 of the director. Approval of an ongoing plan for the payment of
31 dividends or other distributions must be conditioned upon the
32 retention, at the time of each payment, of capital or surplus in
33 excess of amounts specified by, or determined in accordance with
34 formulas approved by, the director.

35 (2) A captive insurance company incorporated as a nonprofit
36 corporation may not make any distributions without the prior
37 approval of the director.

38 (F) An irrevocable letter of credit, which is issued by a
39 financial institution other than a bank chartered by this State or a
40 member bank of the Federal Reserve System, shall meet the same
41 standards as an irrevocable letter of credit which has been issued
42 by either entity.

43

1 Section 38-90-850. (A)(1) The director may not issue a license
2 to a South Carolina coastal captive insurance company unless the
3 company possesses and maintains free surplus of not less than one
4 million dollars; however, in the case of a South Carolina coastal
5 captive insurance company formed as a sponsored captive
6 insurance company that does not assume any risk, where the risks
7 insured by the protected cells are homogeneous, the director may
8 reduce this amount to an amount not less than five hundred
9 thousand dollars.

10 (2)(a) Except for a South Carolina coastal captive insurance
11 company formed as a sponsored captive insurance company that
12 does not assume any risk, the surplus must be in the form of cash,
13 cash equivalent, or an irrevocable letter of credit issued by a bank
14 chartered by this State or a member bank of the Federal Reserve
15 System with a branch office in this State and approved by the
16 director.

17 (b) For a South Carolina coastal captive insurance company
18 formed as a sponsored captive insurance company that does not
19 assume any risk, the surplus also may be in the form of other high
20 quality securities as approved by the director.

21 (B) For purposes of subsection (A), the director may issue a
22 license expressly conditioned upon the captive insurance company
23 providing to the director satisfactory evidence of possession of the
24 minimum required free surplus. Until this evidence is provided,
25 the captive insurance company may not issue a policy, assume any
26 liability, or otherwise provide coverage. The director summarily
27 may revoke the conditional license without legal recourse by the
28 company if satisfactory evidence of the required capital is not
29 provided within a maximum period of time, not to exceed one
30 year, to be established by the director at the time the conditional
31 license is issued.

32 (C) The director may prescribe additional surplus based upon
33 the type, volume, and nature of insurance business transacted.
34 This additional surplus must be in the form of:

35 (1) cash;

36 (2) cash equivalent;

37 (3) an irrevocable letter of credit issued by a bank chartered
38 by this State, or a member bank of the Federal Reserve System
39 with a branch in this State or as approved by the director.

40 (D) Section 38-90-100(C) does not apply and loans to its parent
41 company and affiliates are prohibited.

42 (E)(1) A captive insurance company may not pay a dividend out
43 of, or other distribution with respect to, capital or surplus in excess

1 of the limitations provided in Sections 38-21-250 through
2 38-21-270, without the prior approval of the director. Approval of
3 an ongoing plan for the payment of dividends or other distribution
4 must be conditioned upon the retention, at the time of each
5 payment, of capital or surplus in excess of amounts specified by, or
6 determined in accordance with formulas approved by, the director.

7 (2) A captive insurance company incorporated as a nonprofit
8 corporation may not make any distributions without the prior
9 approval of the director.

10 (F) An irrevocable letter of credit, which is issued by a
11 financial institution other than a bank chartered by this State or a
12 member bank of the Federal Reserve System, shall meet the same
13 standards as an irrevocable letter of credit which has been issued
14 by either entity.

15
16 Section 38-90-860. (A) The requirements of Section 38-90-60
17 apply to a South Carolina coastal captive insurance company.

18 (B) The director has the discretion to restrict the form of a
19 South Carolina coastal captive insurance company to one or more
20 of the types of defined captives listed in Section 38-90-10(8), and
21 has the discretion to accept or deny an application based on a
22 finding that one or more of the incorporation or organization
23 options available under Section 38-90-60 are not feasible for a
24 South Carolina coastal captive insurance company.

25
26 Section 38-90-870. The director, by rule, regulation, or order,
27 may exempt a South Carolina coastal captive insurance company,
28 on a case by case basis, from provisions of this chapter that are
29 determined to be inappropriate given the nature of the risks to be
30 insured and the intent of this article.

31
32 Section 38-90-875. The confidentiality provisions of Sections
33 38-90-70(B) and 38-90-80 do not extend to final reports of its
34 financial condition produced by the director in inspecting or
35 examining a South Carolina coastal captive insurance company
36 and do not extend to reports submitted by a South Carolina coastal
37 captive insurance company. All work papers, recorded
38 information, documents, and their copies produced by, obtained
39 by, or disclosed to the director, his designee, or other persons made
40 under this chapter must be given confidential treatment as provided
41 in Sections 38-90-35, 38-90-70(B), and 38-90-80.

42

1 Section 38-90-880. (A) A South Carolina coastal captive
2 insurance company shall include the following notice on each
3 application form for insurance, as well as the declaration page of
4 each policy, in no less than fourteen-point bold type:

5 'NOTICE

6 This policy is issued by a South Carolina coastal captive insurance
7 company, which is not subject to all of the insurance laws and
8 regulations of the State of South Carolina. State insurance
9 insolvency guaranty funds are not available for a South Carolina
10 coastal captive insurance company.'

11 (B) A South Carolina coastal captive insurance company shall
12 include the following acknowledgment on each application form
13 for insurance, as well as in each policy, in no less than
14 fourteen-point bold type and directly above the applicant or
15 insured's signature:

16 'I have read the Notice contained in this application (or policy)
17 and understand that State of South Carolina insurance insolvency
18 guaranty funds are not available for a South Carolina coastal
19 captive insurance company.'

20
21 Section 38-90-890. The director may not issue a license to a
22 South Carolina coastal captive insurance company unless the
23 director finds that the:

24 (1) coastal captive insurance company is capitalized adequately
25 or properly reinsured, or both, after giving due consideration to the
26 business plan, feasibility study, and proformas, including the level
27 of risk to be retained by the coastal captive insurance company;

28 (2) proposed business plan of the coastal captive insurance
29 company provides for a reasonable and expected successful
30 operation and is not hazardous to any policyholder;

31 (3) proposed business plan, including any contracts or
32 agreements to which the coastal captive insurance company is a
33 party, and the intended operation of the coastal captive insurance
34 company comply with this article and with any other applicable
35 provisions of this title; and

36 (4) proposed business plan and intended operation of the
37 coastal captive insurance company satisfy the purpose of this
38 article."

39
40 SECTION 17. Unless otherwise provided, this act takes effect
41 upon approval by the Governor and is applicable to all taxable
42 years beginning after December 31, 2006.

43 ----XX----

